

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

JACKIE E. BAUGHMAN,

Plaintiff,

v.

CAUSE NO.: 1:17-CV-175-TLS-SLC

ANDREW M. SAUL, Commissioner of the  
Social Security Administration,

Defendant.

**OPINION AND ORDER**

This matter is before the Court on the Plaintiff's Attorney's Supplemental Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 30]. The Plaintiff's attorney requests attorney fees pursuant to 42 U.S.C. § 406(b) in the amount of \$7,027.50. The Defendant filed a Response [ECF No. 33] that he neither supports nor opposes the motion. For the reasons stated below, the Motion is GRANTED.

**BACKGROUND**

The Plaintiff initiated this action for judicial review of the Commissioner of Social Security's decision denying his application for disability insurance benefits. The Court granted the Plaintiff's request, reversing and remanding for further proceedings. May 10, 2018 Op. & Order, ECF No. 20. On August 21, 2018, the Court awarded \$3,683.17 in attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Aug. 21, 2018 Order, ECF No. 23.

On remand, the Social Security Administration issued a Notice of Award entitling the Plaintiff to past-due disability insurance benefits of \$102,084.00, twenty-five percent of which was withheld for the payment of attorney fees in the amount of \$25,521.00. *See* Notice of Award 3, ECF No. 27-5. The Plaintiff's hearing representative received a fee of \$8,940.00 under

§ 406(a) for work at the administrative level. This Court then awarded the Plaintiff's attorney \$16,581.00 in attorney fees under § 406(b), which was offset by the prior \$3,683.17 in EAJA fees, for a net award of \$12,897.83. May 5, 2021 Op. & Order, ECF No. 29.

The Social Security Administration separately issued a Notice of Award of child benefits in the amount of \$28,110.00 in past-due benefits, twenty-five percent of which is \$7,027.50. *See* Notice of Award 1, ECF No. 30-5. In the instant supplemental motion for attorney fees, the Plaintiff's attorney asks the Court to award \$7,027.50 in attorney fees pursuant to § 406(b). This amount is based on the retainer agreement between the Plaintiff and his attorney [ECF No. 30-1], in which the Plaintiff agreed to pay his attorney twenty-five percent of all past-due benefits awarded to the Plaintiff and his family for work at the federal court level.

### ANALYSIS

The Plaintiff's counsel requests a payment of \$7,027.50 in attorney fees pursuant to 42 U.S.C § 406(b). The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level under 42 U.S.C. § 406(a), as well as representation before the Court under 42 U.S.C § 406(b). *See Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the "character of the representation and the results the representative achieved." *Gisbrecht*, 535 U.S. at 808. Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of

time an attorney has spent on a case. *Id.* In addition, an award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount of attorney fees is consistent with the contingency agreement. The effective hourly rate for the work in this case is now approximately \$1,269.27 for the total requested § 406(b) fee award on the original and supplemental motions. *See* Pl’s Suppl. Mot. ¶¶ 3, 12, ECF No. 30 (reflecting 18.6 attorney hours). Such an hourly rate is reasonable given the contingent nature of this case. *See, e.g., Heise v. Colvin*, No. 14-CV-739, 2016 WL 7266741, at \*2 (W.D. Wis. Dec. 15, 2016) (“This results in an effective hourly rate of just over \$1,100, appropriately high to reflect the risk of non-recovery in social security cases . . . .”); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney fees with hourly rates ranging from \$400 to \$1,500). In addition, counsel obtained a great benefit for the Plaintiff in the past-due benefits award for himself and his dependent.

### **CONCLUSION**

For the reasons stated above, the Court GRANTS the Plaintiff’s Attorney’s Supplemental Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 30] and AWARDS attorney fees under 42 U.S.C. § 406(b) in the amount of \$7,027.50.

SO ORDERED on July 6, 2021.

s/ Theresa L. Springmann  
JUDGE THERESA L. SPRINGMANN  
UNITED STATES DISTRICT COURT